

Internal Revenue Service, Treasury

§ 301.6223(b)-1

Revenue Code, a notice is treated as mailed to the tax matters partner on the earlier of—

(1) The date on which the notice is mailed to “THE TAX MATTERS PARTNER” at the address of the partnership (as provided on the partnership return, except as updated under § 301.6223(c)-1); or

(2) The date on which the notice is mailed to the person who is the tax matters partner at the address of that person (as provided on the partner’s return, except as updated under § 301.6223(c)-1) or the partnership. See § 301.6223(c)-1 for rules relating to the information used by the Internal Revenue Service in providing notices, etc.

(b) *Example.* The provisions of this section may be illustrated by the following example:

Example. Partnership P designates B as its tax matters partner in accordance with § 301.6231(a)(7)-1(b). On December 1 a notice of the beginning of an administrative proceeding is mailed to “THE TAX MATTERS PARTNER” at the address of P. On January 10, a copy of the notice is mailed to B at B’s address. December 1 is treated as the date that the notice was mailed to the tax matters partner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50547, Oct. 4, 2001]

§ 301.6223(a)-2 Withdrawal of notice of the beginning of an administrative proceeding.

(a) *In general.* If the Internal Revenue Service, within 45 days after the day on which the notice specified in section 6223(a)(1) is mailed to the tax matters partner, decides not to propose any adjustments to the partnership return as filed, the Internal Revenue Service may withdraw the notice specified in section 6223(a)(1) by mailing a letter to that effect to the tax matters partner within that 45-day period. Even if the Internal Revenue Service does not withdraw the notice specified in section 6223(a)(1), the Internal Revenue Service is not required to issue a notice of final partnership administrative adjustment. If the Internal Revenue Serv-

ice withdraws the notice specified in section 6223(a)(1), neither the Internal Revenue Service nor the tax matters partner is required to furnish any notice with respect to that proceeding to any other partner. Except as provided in paragraph (b) of this section, a notice specified in section 6223(a)(1) which has been withdrawn shall be treated for purposes of subchapter C of chapter 63 of the Internal Revenue Code as if that notice had never been mailed to the tax matters partner.

(b) *Internal Revenue Service may not reissue notice except under certain circumstances.* If the notice specified in section 6223(a)(1) was mailed to the tax matters partner with respect to a partnership taxable year and that notice was later withdrawn as provided in paragraph (a) of this section, the Internal Revenue Service shall not mail a second notice specified in section 6223(a)(1) with respect to that taxable year unless—

(1) There is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact;

(2) The prior proceeding involved the misapplication or erroneous interpretation of an established Internal Revenue Service position existing at the time of the previous examination, or the failure to make an adjustment based on such a position; or

(3) Other circumstances exist which indicate that failure to reissue the notice would be a serious administrative omission.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(a)-2T contained in 26 CFR part 1, revised April 1, 2001.

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§ 301.6223(b)-1 Notice group.

(a) *In general.* If a group of partners having in the aggregate a 5 percent or more interest in the profits of a partnership requests and designates one of their members to receive the notices described in section 6223(a)(1) and (2), the member so designated shall be treated as a partner to whom section 6223(a) applies. Thus, the designated representative is entitled to receive any notice described in section 6223(a)

that is mailed to the tax matters partner 30 days or more after the day on which the Internal Revenue Service receives the request from the group.

(b) *Request for notice*—(1) *In general.* The Internal Revenue Service shall mail to the member of the notice group designated to receive such notice any notice described in section 6223(a) that is mailed to the tax matters partner 30 days or more after the day on which the Internal Revenue Service receives the request for notice from the group if such request for notice is made in accordance with the rules prescribed in this paragraph (b).

(2) *Content of request.* The request for notice from a notice group shall—

(i) Identify the partnership by name, address, and taxpayer identification number;

(ii) Specify the taxable year or years for which the notice group is formed;

(iii) Designate the member of the group to receive the notices;

(iv) Set out the name, address, taxpayer identification number, and profits interest of each member of the group; and

(v) Be signed by all partners comprising the notice group.

(3) *Place for filing.* The request for notice from a notice group generally must be filed with the service center where the partnership return is filed. However, if the notice group representative knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding) has already been mailed to the tax matters partner, the statement should be filed with the Internal Revenue Service office that mailed that notice.

(4) *Copy to be sent to the tax matters partner.* A copy of the request for notice from a notice group shall be provided to the tax matters partner by the notice group representative within 30 days after the request is filed with the Internal Revenue Service.

(5) *Years covered by request.* A request for notice by a notice group may relate only to partnership taxable years that have ended before the request is filed. A request, however, may relate to more than one partnership taxable year if the 5 percent or more profits interest requirement of section 6223(b)(2) is sat-

isfied for each year to which the request relates.

(c) *Composition of notice group*—(1) *In general.* A notice group shall be comprised only of persons who were partners at some time during the partnership taxable year for which the group is formed. If a notice group is formed for more than one taxable year, each member of the group must have been a partner at some time during at least one of the taxable years for which the group is formed. A notice group may include a partner entitled to separate notice. See section 6231(d) and § 301.6231(d)-1 for rules relating to determining the interest of a partner in the profits of a partnership for a partnership taxable year for purposes of section 6223(b). See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(2) *Partner may be a member of only one group.* A partner cannot be a member of more than one notice group with respect to the same partnership for the same partnership taxable year. See paragraph (c)(6) of this section for rules relating to indirect and pass-thru partners.

(3) *Partner may join group after formation.* A partner may join a notice group at any time after the formation of that group by filing with the Internal Revenue Service office where the notice group filed its request a statement that it is joining the notice group. The statement shall identify the partner joining the notice group, the partnership, and the members of the notice group by name, address, and taxpayer identification number and shall be signed by the joining partner. A copy of the statement shall be provided by the joining partner to both the tax matters partner and the notice group representative within 30 days after the request is filed with the Internal Revenue Service. The partner shall become a member of the notice group for each partnership taxable year for which the group was formed and for which the partner was a partner at any time during such partnership taxable year.

(4) *Date on which a partner becomes a member of notice group.* A partner shall become a member of a notice group on the 30th day after the day on which the Internal Revenue Service receives—

(i) A request for notice from a notice group that identifies that partner as a member of that notice group; or

(ii) A statement filed in accordance with paragraph (c)(3) of this section that states that the partner is joining the notice group.

(5) *No withdrawal from notice group.* A partner who has signed a notice group request filed with the Internal Revenue Service remains a member of that notice group until the group terminates. A partner cannot withdraw from the notice group.

(6) *Indirect and pass-thru partners—(i) Pass-thru partners and unidentified indirect partners.* A pass-thru partner may become a member of a notice group as provided in this section. For purposes of applying the aggregate interest requirement specified in paragraph (a) of this section to a pass-thru partner, the partnership interest held by the pass-thru partner shall not include any interest held through the pass-thru partner by an indirect partner that has been identified as provided in section 6223(c)(3) and § 301.6223(c)-1 before the date on which the pass-thru partner becomes a member of the notice group.

(ii) *Indirect partners identified before the pass-thru partner joins a notice group.* An indirect partner may become a member of a notice group with respect to a partnership taxable year only if—

(A) The indirect partner held an interest in the partnership (either directly or through one or more pass-thru partners) at some time during that taxable year; and

(B) The indirect partner was identified as provided in section 6223(c)(3) and § 301.6223(c)-1 on or before the date on which the pass-thru partner became a member of a notice group.

(d) *Termination of notice group.* Unless the original request for notice from the notice group or a subsequent statement filed by the representative (in accordance with paragraphs (b)(3) and (4) of this section) designates a successor to the designated group representative, the group terminates if the representative dies (or, in the case of an entity, if the entity is dissolved), resigns, or is adjudicated incompetent.

(e) *Notice group is not a 5-percent group.* The forming of a notice group

under this section does not constitute the forming of a 5-percent group for purposes of litigation. A notice group is formed solely for the purpose of receiving notices. A 5-percent group is formed solely for the purpose of filing a petition for judicial review or appealing a judicial determination. See § 301.6226(b)-1. Thus, a member of a notice group may choose not to join a 5-percent group formed by other members of the notice group.

(f) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6223(b)-1T contained in 26 CFR part 1, revised April 1, 2001.

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§ 301.6223(c)-1 Additional information regarding partners furnished to the Internal Revenue Service.

(a) *In general.* In addition to the names, addresses, and profits interests as shown on the partnership return, the Internal Revenue Service will use additional information as provided in this section for purposes of administering subchapter C of chapter 63 of the Internal Revenue Code.

(b) *Procedure for furnishing additional information—(1) In general.* Any person may furnish additional information at any time by filing a written statement with the Internal Revenue Service. However, the information contained in the statement will be considered for purposes of determining whether a partner is entitled to a notice described in section 6223(a) only if the Internal Revenue Service receives the statement at least 30 days before the date on which the Internal Revenue Service mails the notice to the tax matters partner. Similarly, information contained in the statement generally will not be taken into account for other purposes by the Internal Revenue Service until 30 days after the statement is received.

(2) *Where statement must be filed.* A statement furnished under this section generally must be filed with the service center where the partnership return is filed. However, if the person filing the statement knows that the notice described in section 6223(a)(1) (beginning of an administrative proceeding)